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ADMINISTRATIVE CONSENT ORDER

NOW, THEREFORE, the Securities and Charities Division of the Mississippi Secretary of State's Office ("Division"), as administrator of the Mississippi Securities Act, hereby enters this

1 Order:

2 I.

3 FINDINGS OF FACT

4 1. Respondents admit the jurisdiction of the Division, neither admit nor deny the
5 Findings of Fact and Conclusions of Law contained in this Order, and consent to the entry of this
6 Order by Division.

7 2. Beginning in March 2008, the task force began its investigation of Respondents'
8 underwriting, marketing, and sale of ARS.

9 3. In or about August and September 2007, some ARS auctions experienced failures.
10 These failures were primarily based on credit quality concerns related to the ARS at issue, which
11 often involved underlying assets of collateralized debt obligations.

12 4. During the fall of 2007 and into the beginning months of 2008, as the default rates
13 on subprime mortgages soared and the market in general began experiencing significant credit
14 tightening, monoline insurers that insured many issuances of ARS were also becoming distressed
15 and were at risk of ratings downgrades.

16 5. The result of the overall market conditions in the fall of 2007 and into the beginning
17 of 2008 resulted in increasing concerns regarding market liquidity, as well as a declining demand
18 for ARS.

19 6. The task force concluded that Respondents should have had knowledge that, during
20 the fall of 2007 and winter of 2008, the auction markets were not functioning properly and were at
21 increased risk for failure.

22 7. During that time period, significant numbers of buyers had been exiting the market
23 and the continued success of the auctions was reliant upon the lead broker-dealers, such as BAS,
24 making increased support bids. These support bids had the effect of artificially propping up the
25 market and creating the illusion that the auction rate market was functioning as normal.

8. However, during that time, Respondents continued to market and sell ARS without informing customers of the heightened risks associated with holding these securities.

9. Instead, Respondents engaged in a concerted effort to market ARS underwritten by BAS towards its large retail customer accounts without advising the retail customers of any of the potential risks associated with a failed auction or market illiquidity.

10. On or about February 11, 2008, without notifying any of its customers, BAS stopped broadly supporting the auctions for which BAS was lead broker-dealer.

11. The decision left thousands of Respondents' customers stuck holding illiquid ARS.

12. On or about September 10, 2008, Respondents, Bank of America Corporation ("BAC"), and Blue Ridge Investments, L.L.C. ("Blue Ridge") agreed, in principle, that BAC would cause Blue Ridge to buy back, at par plus accrued but unpaid interest or dividends, ARS for which auctions were in failed mode from "Eligible Investors," which included all individual investors, all charitable organizations with account values up to \$25 million and small and medium sized businesses with account values up to \$10 million who purchased ARS from Respondents.

II.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over this matter pursuant to the Mississippi Securities Act. Miss. Code Ann. Section 75-71-119 authorizes the Division to regulate: 1) the offers, sales, and purchases of securities; 2) those individuals and entities offering and/or selling securities; and 3) those individuals and entities transacting business as investment advisers within the Mississippi.

A. Respondents Engaged in Dishonest and Unethical Practices.

2. As described in the Findings of Fact section above, Respondents inappropriately marketed and sold ARS without adequately informing their customers of the increased risks of illiquidity associated with the product for the time period August 1, 2007, through February 11, 2008.

3. As a result, Respondents violated Miss. Code Ann. Section 75-71-321(a)(F).

1 B. Respondents Failed to Supervise Their Agents.

2 4. As described in the Findings of Fact section above, Respondents failed to properly
3 supervise their agents with respect to the marketing and sale of ARS from October 1, 2007, to
4 February 11, 2008.

5 5. As a result, Respondents violated Miss. Code Ann. Section 75-71-321(b)(A).

6 6. The Division finds the following relief appropriate and in the public interest.

7 **III.**

8 **ORDER**

9 On the basis of the Findings of Fact, Conclusions of Law, and Respondents' consent to the
10 entry of this Order,

11 IT IS HEREBY ORDERED:

12 1. This Order concludes the investigation by the Division and any other action that the
13 Division could commence under applicable Mississippi law on behalf of Mississippi as it relates to
14 Respondents' underwriting, marketing, and sales of ARS, provided however, that excluded from and
15 not covered by this paragraph 1 are any claims by the Division arising from or relating to the
16 "Order" provisions contained herein.

17 2. This Order is entered into solely for the purpose of resolving the referenced multistate
18 investigation, and is not intended to be used for any other purpose.

19 3. Respondents will CEASE AND DESIST from violating the Mississippi Securities Act
20 and will comply with the Mississippi Securities Act.

21 4. Within ten days after the date of this Order, Respondents shall pay the sum of One
22 Hundred Sixty Thousand Four Hundred Twelve Dollars and Fifty-Two Cents (\$160,412.52) to the
23 Mississippi Secretary of State's "Securities Enforcement Fund – 3114" to be expended for
24 enforcement of the Mississippi Securities Act by the Division.

25 5. In the event another state securities regulator determines not to accept Respondents'
26 settlement offer, the total amount of the Mississippi payment shall not be affected, and shall remain

1 at One Hundred Sixty Thousand Four Hundred Twelve Dollars and Fifty-Two Cents
2 (\$160,412.52).

3 6. Respondents shall comply with the following requirements:

4 a. **Eligible Investors**

5 i. No later than October 21, 2008, BAC shall have caused Blue Ridge
6 to offer to buy back, at par plus accrued and unpaid interest or dividends, Eligible
7 ARS (as such term is defined below) for which auctions are in failed mode from
8 Eligible Investors (as such term is defined below) who purchased such Eligible ARS
9 from Respondents prior to February 13, 2008 (the "Offer"). For purposes of the
10 Offer, Eligible ARS means ARS purchased from Respondents on or before February
11 13, 2008, that were subject to an auction failure on or after February 11, 2008. The
12 Offer shall remain open for a period between October 10, 2008, and December 1,
13 2009, unless extended by Blue Ridge.

14 ii. "Eligible Investors" shall mean:

15 (a) Natural persons (including their IRA accounts, testamentary
16 trust and estate accounts, custodian IGMA and UTMA accounts, and
17 guardianship accounts) who purchased Eligible ARS from Respondents;

18 (b) Charities, endowments, or foundations with Internal Revenue
19 Code Section 501(c)(3) status that purchased Eligible ARS from
20 Respondents and that had \$25 million or less in assets in their accounts with
21 Respondents as determined by the customer's aggregate household
22 position(s) at Respondents as of September 9, 2008; or

23 (c) Small Business that purchased Eligible ARS from
24 Respondents. For purposes of this provision, "Small Business" shall mean
25 Respondents' customers not otherwise covered in paragraph III.6.a.ii(a) and
26 ii(b) above that had \$15 million or less in assets in their accounts with
Respondents as of September 9, 2008.

1 iii. Respondents will have provided prompt notice to customers of the
2 settlement terms and Respondents will have established a dedicated telephone
3 assistance line, with appropriate staffing, to respond to questions from customers
4 concerning the terms of the settlement.

5 **b. Relief for Eligible Investors Who Sold Below Par**

6 No later than December 31, 2008, Respondents shall have promptly provided notice
7 to any Eligible Investor that Respondents could reasonably identify who sold Eligible ARS
8 below par between February 11, 2008, and September 22, 2008. Such investors will be
9 paid the difference by Respondents between par and the price at which the Eligible Investor
10 sold the Eligible ARS. Any such Eligible Investors identified after December 31, 2008,
11 shall be promptly paid the difference between par and the price at which the Eligible
12 Investors sold the Eligible ARS.

13 **c. Consequential Damages Claims**

14 No later than October 10, 2008, Respondents shall make reasonable efforts
15 promptly to notify those Eligible Investors who own Eligible ARS that, pursuant to the
16 terms of the settlement, an independent arbitrator, under the auspices of the Financial
17 Industry Regulatory Authority ("FINRA"), will be available for the exclusive purpose of
18 arbitrating any Eligible Investor's consequential-damages claim.

19 Respondents shall consent to participate in the North American Securities
20 Administrators Association ("NASAA") Special Arbitration Procedure (the "SAP")
21 established specifically for arbitrating claims arising out of an Eligible Investor's inability
22 to sell Eligible ARS. Respondents shall notify Eligible Investors of the terms of the SAP.
23 Nothing in this Order shall serve to limit or expand any party's rights or obligations as
24 provided under the SAP. Arbitration shall be conducted, at the customer's election, by a
25 single non-industry arbitrator and Respondents will pay all forum and filing fees.

26 Arbitrations asserting consequential damages of less than \$1 million will be decided
 through a single chair-qualified public arbitrator who will be appointed through the FINRA

1 list selection process for single arbitrator cases. In arbitrations where the consequential
2 damages claimed are greater than or equal to \$1 million, the parties can, by mutual
3 agreement, expand the panel to include three public arbitrators who will be appointed
4 through FINRA's list procedure.

5 Any Eligible Investors who choose to pursue such claims through the SAP shall
6 bear the burden of proving that they suffered consequential damages and that such damages
7 were caused by their inability to access funds invested in Eligible ARS. In the SAP,
8 Respondents shall be able to defend themselves against such claims; provided, however,
9 that Respondents shall not contest liability for the illiquidity of the underlying ARS position
10 or use as part of their defense any decision by an Eligible Investor not to borrow money
11 from Respondents.

12 All customers, including but not limited to Eligible Investors who avail themselves
13 of the relief provided pursuant to this Order, may pursue any remedies against Respondents
14 available under the law. However, Eligible Investors that elect to utilize the SAP are
15 limited to the remedies available in that process and may not bring or pursue a claim
16 relating to Eligible ARS in another forum.

17 **d. Institutional Investors**

18 Respondents shall endeavor to work with issuers and other interested parties,
19 including regulatory and governmental entities, to expeditiously and on a best efforts basis
20 provide liquidity solutions for institutional investors that purchased Eligible ARS from
21 Respondents and are not entitled to participate in the buyback under Section III
22 ("Institutional Investors").

23 Beginning on December 31, 2008, and then quarterly thereafter, Respondents shall
24 submit a written report to a representative specified by NASAA outlining the efforts in
25 which Respondents have engaged and the results of those efforts with respect to
26 Institutional Investors' holdings in Eligible ARS. The written reports will be submitted 20
days following the end of the quarter. Respondents shall confer with the representative no

1 less frequently than quarterly to discuss Respondents' progress to date. Such written
2 reports and quarterly meetings shall continue until no later than December 31, 2009.
3 Following every quarterly meeting, the representative shall advise Respondents of any
4 concerns and, in response, Respondents shall detail the steps that Respondents plan to
5 implement to address such concerns.

6 e. **Relief for Municipal Issuers**

7 Respondents shall refund refinancing fees to municipal auction rate issuers that
8 issued such securities through Respondents in the initial primary market between August 1,
9 2007, and February 11, 2008, and refinanced those securities through Respondents after
10 February 11, 2008. Refinancing fees are those fees paid to Respondents in connection with
11 a refinancing and are exclusive of legal fees and any other fees or costs not paid to
12 Respondents in connection with the transaction.

13 f. **Repayment of Interest on Loans Provided To Eligible Investors**

14 To the extent that Respondents loaned money to Eligible Investors secured by
15 Eligible ARS, after February 11, 2008, at an interest rate that was higher than that paid on
16 such Eligible ARS, Respondents shall refund the difference to such Eligible Investors.

17 g. **Penalties**

18 i. Respondents shall pay a total civil penalty of FIFTY MILLION
19 (\$50,000,000) DOLLARS, which shall be allocated among and paid to the
20 Commonwealth of Massachusetts, the state of New York, and such other states and
21 territories that enter administrative or civil consent orders approving the terms of the
22 NASAA settlement (together with the Commonwealth of Massachusetts and the
23 state of New York, the "Approving States"). Any such allocation shall be made at
24 the discretion of the Approving States;

25 ii. The Division's portion of the civil penalty shall be One Hundred
26 Sixty Thousand Four Hundred Twelve Dollars and Fifty-Two Cents (\$160,412.52)

1 and shall be paid to the Division no later than ten business days after the date of the
2 Consent Order.

3 **h. In Consideration of the Settlement**

4 The Division will:

5 i. Terminate the investigation of Respondents' underwriting,
6 marketing, and sale of ARS to Eligible Investors as defined herein; and

7 ii. Refrain from taking legal action, if necessary, against Respondents
8 with respect to their institutional investors until December 31, 2008; the Division
9 shall issue continuances of that period as it deems appropriate; and

10 iii. The Division will not seek additional monetary penalties from
11 Respondents in connection with all underlying conduct relating to Respondents'
12 underwriting, marketing, and sale of ARS to investors.

13 i. If, after this Order is executed, Respondents fail to comply with any of the
14 terms set forth herein, the Division may take appropriate remedial action.

15 7. If payment is not made by Respondents, or if Respondents default in any of their
16 obligations set forth in this Order, the Division may vacate this Order, at its sole discretion, upon
17 10 days notice to Respondents and without opportunity for administrative hearing.

18 8. This Order as entered into by the Division waives any disqualification contained in
19 the laws of the Mississippi, or rules or regulations thereunder, including any disqualifications from
20 relying upon the registration exemptions or safe harbor provisions that BAI, BAS, or any of their
21 affiliates may be subject to as a result of the findings contained in this Order. This Order also is
22 not intended to subject BAI or BAS or any of their affiliates to any disqualifications contained in
23 the federal securities laws, the rules and regulations thereunder, the rules and regulations of self
24 regulatory organizations, or various states' or U.S. Territories' securities laws, including, without
25 limitation, any disqualifications from relying upon the registration exemptions or safe harbor
26 provisions. In addition, this Order is not intended to form the basis for any such disqualifications.

9. For any person or entity not a party to this Order, this Order does not limit or create

1 any private rights or remedies against Respondents including, without limitation, the use of any e-
2 mails or other documents of Respondents or of others for auction rate securities sales practices, limit
3 or create liability of Respondents, or limit or create defenses of Respondents to any claims.

4 10. Nothing herein shall preclude Mississippi, its departments, agencies, boards,
5 commissions, authorities, political subdivisions and corporations, other than the Division and only to
6 the extent set forth in paragraph 1 above, (collectively, "State Entities") and the officers, agents or
7 employees of State Entities from asserting any claims, causes of action, or applications for
8 compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief
9 against Respondents in connection with certain auction rate securities sales practices at Respondents.

10 11. This Order and any dispute related thereto shall be construed and enforced in
11 accordance with, and governed by, the laws of the Mississippi without regard to any choice of law
12 principles.

13 12. Respondents, through their execution of this Order, voluntarily waive their right to a
14 hearing on this matter and to judicial review of this Order under Miss. Code Ann. Section 75-71-
15 715.

16 13. Respondents enter into this Order voluntarily and represents that no threats, offers,
17 promises, or inducements of any kind have been made by the Division or any member, officer,
18 employee, agent, or representative of the Division to induce Respondents to enter into this Order.

19 14. This Order shall be binding upon Respondents and each of their successors and
20 assigns with respect to all conduct subject to the provisions above and all future obligations,
21 responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

22 Dated this 26th day of May, 2000.

23 BY ORDER OF C. DELBERT HOSEMAN, JR.
24 Mississippi Secretary of State

25 By: Patricia Melvin

26 PATRICIA MELVIN
Chief Counsel
Securities and Charities Division

1 **CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY BANC OF AMERICA**
2 **SECURITIES LLC AND BANC OF AMERICA INVESTMENT SERVICES, INC.**

3 Banc of America Securities LLC ("BAS") and Banc of America Investment Services, Inc. ("BAI")
4 and, together with BAS, "Respondents"), hereby acknowledge that they have been served with a copy of
5 this Administrative Order, have read the foregoing Order, are aware of their right to a hearing and appeal in
6 this matter, and have waived the same.

7 Respondents admit the jurisdiction of the Securities and Charities Division of the Mississippi
8 Secretary of State's Office ("Division"), neither admit nor deny the Findings of Fact and Conclusions of
9 Law contained in this Order, and consent to entry of this Order by the Division as settlement of the issues
10 contained in this Order.

11 Respondents agree that they shall not claim, assert, or apply for a tax deduction or tax credit with
12 regard to any state, federal, or local tax for any administrative monetary penalty that Respondents shall pay
13 pursuant to this Order.

14 Respondents state that no promise of any kind or nature whatsoever was made to them to induce
15 them to enter into this Order and that they have entered into this Order voluntarily.

16 Steve Chaiken represents that he/she is Managing Director of BAS, and that, as
17 such, has been authorized by BAS to enter into this Order for and on behalf of BAS.

18 _____ represents that he/she is _____ of BAI and that, as
19 such, has been authorized by BAI to enter into this Order for and on behalf of BAI.

20 Dated this ____ day of _____, 2009.

21 BANC OF AMERICA SECURITIES LLC

22 By: Steve Chaiken
23 Title: Managing Director

24 State of New York
25) ss.
26 County of New York

27 SUBSCRIBED AND SWORN TO before me this 28 day of April 2009.

28 Xavier Miranda
29 Notary Public

30 My commission expires:

January 9, 2010

XAVIER MIRANDA
Notary Public - State of New York
No. 01M0139426
Qualified In New York County
My Commission Expires Jan. 09, 2010

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BANC OF AMERICA INVESTMENT SERVICES, INC.


By: *Ronald J. Newth*
Title: Ronald J. Newth, COO/SVP

State of Massachusetts
County of Suffolk) ss.

SUBSCRIBED AND SWORN TO before me this 28th day of April 2009.

Maryann Carroll
Notary Public

My commission expires:
July 4, 2014

 **MARY ANN CARROLL**
Notary Public
Commonwealth of Massachusetts
My Commission Expires
July 4, 2014

**1 CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY BANC OF AMERICA
2 SECURITIES LLC AND BANC OF AMERICA INVESTMENT SERVICES, INC.**

3 Banc of America Securities LLC ("BAS") and Banc of America Investment Services, Inc. ("BAI"
4 and, together with BAS, "Respondents"), hereby acknowledge that they have been served with a copy of
5 this Administrative Order, have read the foregoing Order, are aware of their right to a hearing and appeal in
6 this matter, and have waived the same.

7 Respondents admit the jurisdiction of the Securities and Charities Division of the Mississippi
8 Secretary of State's Office ("Division"), neither admit nor deny the Findings of Fact and Conclusions of
9 Law contained in this Order, and consent to entry of this Order by the Division as settlement of the issues
10 contained in this Order.

11 Respondents agree that they shall not claim, assert, or apply for a tax deduction or tax credit with
12 regard to any state, federal, or local tax for any administrative monetary penalty that Respondents shall pay
13 pursuant to this Order.

14 Respondents state that no promise of any kind or nature whatsoever was made to them to induce
15 them to enter into this Order and that they have entered into this Order voluntarily.

16 _____ represents that he/she is _____ of BAS, and that, as
17 such, has been authorized by BAS to enter into this Order for and on behalf of BAS.

18 _____ represents that he/she is _____ of BAI and that, as
19 such, has been authorized by BAI to enter into this Order for and on behalf of BAI.

20 Dated this ____ day of _____, 2009.

21 BANC OF AMERICA SECURITIES LLC

22 By: _____

23 Title: _____

24 State of _____)
25) ss.
26 County of _____)

 SUBSCRIBED AND SWORN TO before me this ____ day of _____ 2009.

Notary Public

My commission expires:

State of _____)

) ss.

County of _____)

SUBSCRIBED AND SWORN TO before me this _____ day of _____ 2009.

My commission expires: